



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO. 12 OF 2013

J N K (SUING AS THE LEGAL REPRESENTATIVE OF

THE ESTATE OF MMM (DECEASED).....PLAINTIFF

-VERSUS-

THE CHAIRMAN BOARD OF

GOVERNORS [...]BOYS HIGH SCHOOL.....DEFENDANT

JUDGMENT

[1] The plaintiff, J N K, is the legal representative of the estate of MMM (deceased). She filed this suit against the defendant on 13th March 2013 by way of a plaint. According to the plaint, it is claimed that; on or about the 29th February 2012 the deceased was lawfully celebrating K.C.S.E performance of [Particulars Withheld] Boys High School along Nkubu – Embu road when the defendant, his agents, servants, employee and/or driver drove motor vehicle registration number KAR 432L a bus, so negligently, recklessly and /or carelessly and thereby knocked the deceased and wounded him fatally. The particulars of negligence on the part of the defendant as pleaded in the plaint are as follows:

- a. Driving motor vehicle registration number KAR 432L bus in an excessive speed in the circumstances causing the motor vehicle to knock the deceased*
- b. Driving carelessly and recklessly without any due care and attention or at all*
- c. Driving in total disregard as to the safety of other road users the deceased in particular*
- d. Failing to hoot in any other prudent manner warn the deceased of the motor vehicle approach*
- e. Failing to break, swerve, stop and or act in any other prudent manner to avoid the accident*
- f. Hitting and or knocking the deceased and wounding him fatally.*
- g. Causing the accident*

[2] The plaintiff avers that as a consequence of the matter aforesaid the deceased's estate has suffered loss and damages. Particulars of special damages pleaded are:

- a. Funeral expenses.....Kshs. 20,000/-
- b. Advocates fees for obtaining limited grant.....Kshs. 20,000/-
- c. Death certificate.....Kshs. 100/-
- Postmortem fees.....Kshs.

Total.....Kshs.40,100/-

The plaintiff thus prays for judgment against the defendant for the above special damages, general damages for loss of dependency, loss of life, expectancy, pain and suffering and costs of the suit and interest thereon.

[3] The defendant filed his defence on 25th April 2013. In his defence he admits being the beneficial and owner in possession of motor vehicle registration number KAR 432L bus. However, the defendant denies *in toto* the particulars of negligence, the suffered loss and damages and puts the plaintiff to strict proof.

[4] The plaintiff called 3 witnesses to support her case. **PW1 J N K** adopted her statement dated 9th March 2015 as her evidence in chief. She stated that her son was among the students celebrating [Particulars Withheld] Boys High School K.C.S.E performance at Kanyakine market when the accident occurred. He was run over by the school bus of the said school, m/v reg. KAR 432L. He succumbed to the injuries while undergoing treatment. He was 16 years of age, healthy, energetic and a form four student at the said school. After the incidence the school has never supported her or even communicated to her. Her son's belongings are still at the school of which she has never gone to collect. Also, the school did not pay the hospital bills and postmortem and neither did they attend the deceased's funeral.

[5] **PW2 Erick Mwiti Mutwiri** adopted his statement filed on 13th March 2015 as his evidence in chief. He stated that on Wednesday 29th February 2012 at around 3. 30 P.M when he was at Kanyakine stage he heard loud voices of students singing from [Particulars Withheld] High School. They had divided themselves into about three groups and were saying they were heading to Nkubu Seminary School for revenge. They had not gone far when the school bus arrived and they stopped it. The bus did not stop but the students boarded it anyway through the door and windows while it was still moving at a low speed. Suddenly, one of the students who were hanging on the window fell down. He heard some students saying that a student had been ran over by the bus. He went there and saw that he had been overrun by the bus. The student was rushed to Kanyakine District Hospital. The next day he heard that the boy had died.

[6] **PW3 Dr. Makau Mutwiri** produced the post-mortem report but he is not the one who prepared it, it was Dr. Tharamba. He knows her and is conversant with her handwriting. He stated that the deceased alleged fell from the school bus and trampled upon by fellow students where upon he sustained fractures for which he was undergoing treatment. There is also a possibility that the injuries could be as a result of being knocked down by a vehicle. Examination revealed that the cause of death to be haemorrhage secondary to the fractures.

[7] After the close of the plaintiff's case the defendant called 7 witnesses. **DW1 Douglas Kithinji Magiri** is the principal of [Particulars Withheld] High School. He adopted his statement which was filed on 3rd April 2014. He stated that on 29th February 2012 when the K.C.S.E results were released he announced them to the students at 4.00PM. Immediately after announcing the boys ran out of the school in celebration. He instructed the deputy principal, the discipline committee and school driver to pursue the students and bring them back to school. The school bus went to the stage to collect the students together with the deputy principal who followed in his car. The deceased scrambled to catch the bus but was trampled upon by students after he fell from the bus window. He was taken to hospital but later succumbed to the injuries. When he rushed to the hospital to see the deceased he had shoe marks all over his body and the clothes were dusty. The school had agreed to support in the funeral arrangements. But on 6th March 2012 the family came with Kiget to school who asked them to declare their interest by wanting to meet the costs of the funeral. On that basis the board withdrew their assistance. Additionally, the deceased had been sickly since Form 1 and the family had reported to them to enter medical attention to him. At one time he was vomiting blood and since the mother said that she is the only one who knows about his problem, he drove him to his home on 15th February 2011. The deceased came back on 9th March 2011. On the 29th February 2012 the deceased was ok and attended classes. He did not report matter to the police neither did anyone else. He was in charge of the boy and was to take care of him while in school. He informed the deceased's family that his items were ready for collection but nobody was interested.

[8] **DW2 Timothy Marangu Marete** adopted his statement filed in this court as evidence. He stated that on 29th February 2014 he was driving KAR 432L belonging to the school. He was told by the deputy principal to take the bus and go carry the students back to school. He went in the company of three teachers. The students singing in jubilation were more than 400 students who had blocked the road. He met them at the junction, which is tarmac, where he stopped. The students scrambled to board the bus from all openings including windows. They boarded by forcing themselves in and according to the space of the bus it was not possible to carry them. He drove for a short while when he was informed that a student had been injured. He did not see the boy fall but heard that one of them had been injured. The deputy principal arrived at the scene thereafter and handled the issue and he drove to Nkubu. He did not report the matter because he did not knock the child down.

[9] **DW3 EK** adopted his statement filed in court. He was a student and school captain at the time of the incident. He entered the bus and sat at the rear seat. That due to the commotions of the other students the deceased was stepped over by others. During cross-examination he stated that he saw the deceased down and other boys stepping on him. **DW4 AMK** stated that he was outside the bus. He only heard the deceased saying in the midst of the crowd that he had been stepped on. **DW5 TM** was also a student at that time stated that he was in the bus when the incident happened and so many students outside the bus. He heard shouts that someone had fallen.

[10] **DW6 Gilbert Mugambi Mugira** the deputy principal at the time of the incident adopted his statement as his evidence. That on the said day he followed the bus with his car. Before reaching the market a group of students informed him that a student had been injured. He rushed him to Kanyakine hospital. His thigh was swollen and he had dust and his had around the palm was bloody. Before him being transferred to Meru Level 5 Hospital he paid Kshs. 7,000 which he had been given by the principal to facilitate the transfer. Students are brought to school and left to the care of the school. The responsibility does not cover students who go out of the compound without following due process.

[11] **DW7 Haron Mbae Ikiungu** was a teacher at [Particulars Withheld] Boys High School when the incident occurred. He adopted his statement into evidence. He together with prefects were in the bus. He stated that the true position is that the bus stopped and students rushed to enter the bus through the door and windows. He got out of the bus and saw the boys crowding the scene.

Submissions by Plaintiff

[12] Parties filed written submissions. The plaintiff in her submissions dated 11th October 2017 pleads the doctrine of *res ipsa loquitur* as her claim is rooted in negligence particulars whereof are enumerated in the plaint. She argued that the driver failed to have proper control of the vehicle and had no regard for the safety of the deceased. She seeks the court to enter judgment on liability at 100% against the defendant. On quantum, the plaintiff seeks both special and general damages under the Law Reform Act and Fatal Accidents Act as follows:

a) Pain and suffering	– Kshs. 50,000/-
b) Loss of expectation of life	– Kshs. 300,000/-
Total under the Law Reform Act	– Kshs. 350,000/-
c) Fatal Accidents Act	– Kshs. 2,400,000/-
d) Special damages	– Kshs. 210,650/-
Total	– Kshs.2, 960,650

Submissions by the Defendant

[13] The Defendant in their submissions dated 5th December 2017 stated that the issue for determination before this court is whether or not the deceased was knocked by the school bus as alleged. The defendant ascertained that the students moved out of the school without permission. They voluntarily put themselves to danger; doctrine of *volenti non fit injuria*, suggests that he authored his demise. The inquest report shows how the students were entering the bus and negligence can only be to the deceased. At no point was the driver ever charged for reckless driving, or for knocking the deceased and fatally injuring him. If he had been knocked by a bus which is more than 5 tones and on motion then he would have been crushed into pieces and not to have a fracture of the leg which was due to being stepped on by his colleagues. They submit that the argument by the plaintiff does not hold water and that liability is 100% on the deceased. The plaintiff has not proven her case on a balance of probability.

[14] According to the inquest report it was concluded that:

“This court cannot find any particular individual specifically responsible for the resultant accident and consequences thereof but concludes that there was exhibited culpable carelessness in the circumstances preceding the events of that 29/2/12 which led to the demise of the deceased herein.”

ANALYSIS AND DETERMINATION

[15] This court will decipher the evidence tendered, evaluate it and come to its own conclusion. In doing so, the court will care to employ judicious emphasis and alertness, have an eye for symmetry or balance and an ear for subtleties of the evidence adduced so as not to miss the grace and power of the testimony of witnesses and the applicable law. Ultimately, will make court’s overall impression of the evidence, facts and the law applicable in absolute clarity and directness.

Issues

[16] Upon careful consideration of the pleadings, the evidence produced and the submissions, the following issues fall for determination by the court, namely:

- 1. Whether on or about 29th February 2012 MM (deceased) was involved in an accident with bus KAR 432L?***
- 2. Whether the deceased was fatally injured as a result of the accident?***
- 3. Who is to blame for the accident and in what proportion?***
- 4. Whether the plaintiff is entitled to special and general damages?***
- 5. Who should pay costs of this suit and interest thereon?***

Involvement of the bus in accident

[17] The first and second issue shall be dealt with together. According to the evidence adduced, on the 29th February 2012 the principal of [Particulars Withheld] Boys High School announced the K.C.S.E results for the school. The results were quite pleasant and triumphant. This caused the students to storm out of the school in celebration. They went to the market chanting and singing in jubilation. A decision was made by the school that the school bus should follow the students in order to carry them back to school. So, the school bus was driven out of the school to pick the students. The students were said to be more than 400. **PW2** who witnessed the incident stated that, when the school bus approached, the students scrambled to board the bus; some through the door; others through the windows. At the time, the school bus was moving albeit, at a slow speed. **DW2** confirmed the foregoing events and added that the capacity of the bus could not hold the number of students who were more than 400. He also stated that the driver of the school bus had driven for a short while when he was informed that a student had been injured. **DW3** testified that he saw the deceased down and other boys stepping on him. **DW4** who was two meters away

heard a cry of a boy saying that he had been stepped on. **DW5** heard shouts that someone had fallen.

School's duty to secure students

[18] I should determine whether on a balance of probabilities, the plaintiff has proved her case. From the evidenced adduced, more than 400 students had stormed out of the school in jubilation of the good performance by school in KCSE examinations. The evidence also show that scrambled to board the bus; some boarded through the door; others through the windows. Here, three questions abound: (1) whether the school could have prevented the students from storming out of the school; and (2) whether appropriate boarding procedure was adopted; and (3) whether the driver of the bus acted with due care and attention in the circumstances. On the first question, **DW1**, the Principal of the School admitted that the deceased had been committed to his care as he had been ailing. That aside, the school had the primary responsibility of ensuring students' safety by securely manning the gates and making sure that students do not go outside the school compound unless with prior permission and arrangement. The deceased herein was a child. Accordingly, I am persuaded to cite the reasoning on best interest of the child in relation to procedural safety of a child in the case of *A M v Premier Academy* [2017] eKLR that:

“Best interests” determinations are generally made by considering a number of factors related to the child’s circumstances and the parent or caregiver’s circumstances or school’s circumstances, with the child’s ultimate safety and well-being the paramount concern and in a school environment the safety and well-being of other pupils.

A “best interests determination” describes the formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option. The best option in a school environment must as of necessity consider the welfare and safety of other pupils and the behaviour of the child in school and the efforts and ability by the teachers to contain the behaviour of the child in school and above all the conduct and attitude of the parents to the school. If the parent, as in this case ignores pleas by the school to attend issues touching on the discipline of the child, then that becomes a relevant factor. The term “best interests” broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child’s environment and experiences, behaviour in school and attitude towards other children. The child is entitled to protection. Equally, other pupils are entitled to protection also.”

[19] Nothing showed that the students broke down the school gates. Letting them to go outside the school was negligent of the school. It is therefore, imprudent to state that the students put themselves into danger when they went out of the school without first showing that reasonable measures were taken or put in place to secure the students in the school compound. Or better still; to prevent them from leaving the school compound without permission.

Decision to pick students in a bus

[20] The decision that the bus should follow the students with the aim of bringing them back looks quite plausible. But, it ought to have been attended to by prudent and careful execution especially boarding of students into the bus. The school knew that the students were many in number and were in a celebratory mood. Thus, extreme care and caution was necessary in bringing them back to the school. The students were over 400; this was quite a crowd which could not have been accommodated in the bus at one go or in a single bus. Rowdy or improper conduct from the students was reasonably foreseeable and expected. And, so, releasing the bus to bring the students back to the school without careful method of boarding was imprudent and negligent act by the school.

Driver’s responsibility

[21] Hitherto, it is clear that the driver of the bus ought to have exercised due care and attention when the student started to scramble for the bus. See reasoning in *parimateria* with this case that was expressed in the case of **KATANA MGAO vs. ANDREW KAMAU WOKABI & ANOTHER** [1993] eKLR:

“Further, the plaintiff has clearly proved that the bus did not allow him sufficient time to get into the bus. I entertain no doubt that the 1st defendant owed the intending passengers a duty of care. A prudent driver of a public vehicle should easily foresee that some passengers may be hampered by all sorts of factors, whether personal or otherwise from speedily jumping into the vehicle; and so it behooves him to be patient and allow them enough time to safely get into the vehicle. He should ensure that all his passengers are safely aboard or have safely alighted before he drives from that stage. I find as a fact that the driver in the present case failed to observe those fundamental rules.”

[22] The evidence adduced by **PW2** was that the bus drove at a slow speed while students were boarding. **DW2** testified that he had drove for a short while when he heard that someone had been injured. In such circumstances where you are approaching a huge crowd of students, and immediately upon realizing that students are scrambling to board the bus, as a driver, you ought to stop the bus immediately and completely. In fact, a prudent driver is trained to be cautious when approaching such huge crowd of students- majority of whom are minors. It bears repeating that anticipation of inappropriate conduct in boarding the bus by students in these circumstances was reasonably foreseeable. The driver should have approached the students with due care and attention. It seems from the evidence that the driver did stop immediately he reached where the students were. Instead he continued to drive only to stop after he had shouts that someone has fallen down. The moving bus would cause further commotion, unnecessary force, confusion and damage. That notwithstanding, was the deceased trampled on by the students or knocked down by the bus?

Involvement of the bus

[23] The contention by the Defendant was that the deceased boy tried to enter the bus through the window, fell down and was trampled upon by fellow students. **PW2** stated that he heard people saying that the deceased had been ran over by the bus. When he got closer he saw that

the deceased had indeed been run over. **DW3** stated he saw the deceased being stepped on by other boys. However, his evidence is contradictory for in his statement he stated that he was seated inside the bus at that time. He did not elaborate on how he was able to see what exactly happened. All the other witnesses for the defendant did not see exactly what happened. **DW4** heard the deceased say that he had been stepped on, but did not state what specifically stepped on him; the bus or students. **DW5** just heard shouts that someone had fallen from the window of the bus. **PW3** stated that there is a possibility the injuries could be as a result of being knocked down by a vehicle. Apart from **PW2's** testimony no other person saw what happened. The most potent evidence is that the deceased was involved in an accident with KAR 432L.I so hold.

Liability

[24] All the circumstances preceding the accident and at the time of the accident places responsibility of the accident largely on the school and the driver of the school bus. The driver did not exercise due care and attention in circumstances where he ought to have realized that the students were unmistakable signal of danger. He was negligent as a result of which this accident occurred fatally injuring the deceased. The fact that students were boarding the bus through the door and windows may not necessarily mitigate the liability of the driver. However, I would apportion 20% contributory negligence on the deceased as there is doubt whether he boarded the bus through the window or the door. Worthy repeating is that the driver and the school were largely to blame. Accordingly, I peg their blameworthy at 80%. The driver herein was driving the vehicle herein in the course of his employment and so the defendant is vicariously liable for his negligent acts. It is so ordered.

QUANTUM

Loss of dependency

[25] The plaintiff seeks both general and special damages under the Law Reform Act and Fatal Accidents Act. The Fatal Accidents Act caters for dependants of the deceased. Section 4 (1) of the Fatal Accidents Act states:

“(1) Every action brought by virtue of the provisions of this Act shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused...”

[26] Dependency is required. See the case of **Leonard O. Ekisa & another v Major K. Birgen [2005] eKLR** where it was held:

“I will start by considering damages awardable under the Fatal Accidents Act (Cap.32). Damages awardable under this Act are for loss of dependency. Therefore there has to be proof of dependants and evidence of dependency.”

[27] The plaintiff submitted that her son would have completed his O level education, joined university and engaged in gainful employment thereafter. The deceased is entitled to lost years as he would have helped his parents in adulthood had he completed his studies and started working. In African society, as is the case here, children are considered as a blessing in the family; and are expected to help their parents when they grow up and secure employment. See the decision of the Court of Appeal in **KENYA BREWERIES LIMITED vs. SARO, [1991] KLR 408** that:-

“We would respectfully agree with Mr. Pandya that in the assessment of damages to be awarded in this sort of action, the age of the deceased child is a relevant factor to be taken in to account so that in the case of say a thirteen year old boy already in school and doing well in his studies, the damages to be awarded would naturally be higher than those awardable in the case of a four year old one who has not been to school and whose abilities are yet not ascertained. That, we think, is a question of common sense rather than law. But the issue of some damages being payable in both cases is no longer an open question in Kenya. This is because in the Kenyan society, at least as regards African and Asians, the mere presence in a family of a child of whatever age and of whatever ability is itself a valuable asset which the parent are proud of and are entitled to keep intact. It is an accepted fact of life in Kenya that even young children do help in the family, say by looking after cattle or caring for younger followers, and once the children become adults they are expected to and do invariably take care of their aged parents.”

[28] The foregoing position has been reinforced in our jurisprudence in a great number of cases which I need not multiply except, for emphasis, I will cite the case of **ELIUD MWALE LEWA & ANOTHER vs. PAKA TOURS LIMITED & ANOTHER [2009] eKLR** that:

“When a child dies the parents do suffer a quantifiable loss. It is established custom in both African and Asian communities that children are educated and raised in the expectation that they will in turn provide for their parents in their old age. There are several instances where courts have indeed proceeded to make awards for lost years under the Fatal Accidents Act Cap 32 Laws of Kenya.”

[29] By virtue of the fact that the plaintiff is a parent of the deceased child, she is entitled to loss of dependency. The plaintiff worked out the dependency as follows: $40 \times \frac{1}{3} \times 12 \times \text{Kshs. } 15,000 = \text{Kshs. } 2,400,000$. This calculation brings me to the appropriateness of multiplier method in assessing damages for the deceased, a child aged 16 years in this case. *Ringera J* (as he then was) put it quite aptly in the case of **KWANZIA vs. NGALALI MUTUA & ANOTHER** that:

“The Multiplier approach is just a method of assessing damages. It is not a principle of law or a dogma. It can, and must be abandoned, where facts do not facilitate its application. It is plain that it is a useful and practical method where factors such as age of the deceased, the amount of annual or monthly dependency, and the expected length of the dependency are known or are knowable without undue speculation, where that is not possible, to insist on the multiplier approach would be to sacrifice justice on the altar of methodology, something a Court of Justice should never do.”

[30] See also other cases such as: **EPHRAIM MUTAHI MUTUNDE vs. RAPTURE BUS SERVICES LIMITED MOMBASA HIGH COURT CASE NO. S18 OF 2011 (2016)** eKLR Otieno and the case of **CHARLES OUMA OTIENO & ANOTHER vs. BENARD ODHIAMBO OGECHA (SUING AS BROTHER AND LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE LATE OSCAR ONYANGO OGECHA (DECEASED) [2014]** eKLR and **OSHVJI KUVENJI & ANOTHER vs. JAMES MOHAMED ONGENGE [2012]** eKLR. In the latter case, the court stated:

“I would, in the instance hold the view that the future of a minor is uncertain and it might be risky to assume what life he/she would have lived into adulthood. As such, I would award a global figure under the head of loss of dependency.”

[31] From the evidence adduced, there is no way of ascertaining what the deceased would have become or his earnings in his future. The scope of dependency is uncertain too in such circumstances. Accordingly, this is a perfect case to make an award of a global sum for dependency. What comparable awards could guide me?

[32] In **Chen Wembo & 2 others v I K K & another (suing as the legal representatives and administrators of the estate of C R K (Deceased) [2017]** eKLR the court awarded a global award of Kshs. 600,000 for the estate of an 12 year old minor. In **Oshivji Kuvengi & Another V James Mohamed Ongenge [2012]** eKLR a deceased minor aged 6 years was awarded a global sum of Kshs 320,000/= under this heading.

[33] The above decisions relate to minors of 14 years and 6 years respectively. The awards were Kshs. 600,000 and Kshs. 320,000 respectively. The deceased herein was aged 16 years and was in form four. Taking into account the age of the deceased, i.e. 16 years and the fact that he was in form four, his prospects were not too far away; (1) that the deceased would have completed form four which ushers in college or university education; and (2) the deceased would have matured into majority age; and help his mother. Accordingly, I find an award in the sum of Kshs. 100,000 for loss of dependency to be reasonable and fair compensation for loss of dependency. I so award.

Loss of expectation of life

[34] Damages awarded under this head ordinarily is Kshs. 100,000 which I award.

Pain and suffering

[35] The deceased died on the same day due to hemorrhage secondary to the structures. According to the inquest report when the deceased fell the students immediately picked him up. Award for Pain and suffering of Kshs. 50,000/- is reasonable. I so award.

Special damages

[36] The plaintiff pleaded in her plaint an amount of Kshs. 40,100 which entails funeral expenses, death certificate, postmortem fees and advocates fees for obtaining limited grant. In her submissions she pleads an amount of Kshs. 210, 650. She affirmed that she produced a receipt of Kshs.20,000/- paid to Nkuene Girls High School for bus hire, receipt of Kshs. 40,000/- for payment of hearse and coffin, receipt of Kshs. 13,000/- paid to Winners Academy-Nkubu bus hire, expenses for burial of 10th March 2012 of Kshs. 117, 550/-. Special damages must be ascertained and proved. However, these receipts the plaintiff claims to have been produced cannot be traced in the court record. I have considered that special damages should be specifically pleaded and proved. However, I will borrow the wisdom by the Court of Appeal in the case of **Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited [2016]** eKLR that:

“We do not discern from our reading of this decision a departure from the time tested principle that special damages should not only be specifically pleaded but must also be strictly proved. ... We are of course aware of the court occasionally loosening this requirement when it comes to matters of common notoriety for example a claim for special damages on burial expenses where the claimant may not have receipts for the coffin, transport costs, food etc. However, the claim herein did not fall in that class.”

[37] In spite of lack of receipts this court ought not to turn a blind eye to the fact that there were funeral costs incurred as a result of the burial of the deceased. The court has awarded this where there were no receipts provided. In **Alice O. Alukwe v Akamba Public Road Services Ltd & 3 others [2013]** eKLR the plaintiff was awarded Kshs. 30,000/- for funeral expenses. The Court of Appeal in the case of **Jacob Ayiga Maruja & another Vs. Simeon Obayo [2005]** eKLR awarded the plaintiff Kshs. 60,000/-. While in **Lucy Wambui Kihoro (Suing As Personal Representative Of Deceased, Douglas Kinyua Wambui) v Elizabeth Njeri Obuong [2015]** eKLR the plaintiff was awarded Kshs. 50,000/-. I will take a big gamble in view of the circumstances of this case and award a sum of Kshs. 60,000 for funeral expenses over and above the pleaded special damages of Kshs. 40,100. The total shall be Kshs. 100,100 in special damages. It is so awarded.

The decision

[38] In the upshot, I enter judgment for the plaintiff and against the defendant as following:

a. *Pain and suffering.....Kshs. 50,000/*

b. *Loss of expectation of life...Kshs. 100,000*

c. *Loss of dependency.....Kshs. 1000, 000/-*

d. *Funeral Expenses.....Kshs. 100,100/-*

Total.....Kshs.1, 250,100

Less 20%.....Kshs. 250,020

Net Total.....Kshs. 1,000,080

[39] The above sum shall carry interest at court rates from the date hereof till payment in full. The plaintiff shall also have the costs of the judgment sum. It is so ordered.

Dated, signed and delivered in open court at Meru this 8th day of May 2018

F. GIKONYO

JUDGE

In the presence of:

Mr. Kiget advocate for plaintiff

Mr. Kiongo advocate for defendant

F. GIKONYO

JUDGE